IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12718 of 2004

with

SPECIAL CIVIL APPLICATION No 484 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHBHAI GANDABHAI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12718 of 2004
   MR JC VYAS for Petitioner No. 1
   MR NAGESH SOOD ASST GOVT PLEADER for Respondent No. 1-3
   UNSERVED-REFUSED (N) for Respondent No. 4
2. Special Civil Application No. 484 of 2005
   MR JC VYAS for Petitioner No. 1
   MR NAGESH SOOD ASST GOVERNMENT PLEADER for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 21/02/2005

COMMON ORAL JUDGEMENT

Rule. Shri Nagesh Sood, the learned AGP waives service of Rule on behalf of the respondents in both these petitions.

With the consent of the learned advocates for the parties, both these matters are taken up for final hearing today.

.RS 2.

#. In both these petitions, the disputes are with regard to Entry No.8737 (involved in Special Civil Application No.12718 of 2004) and Entry No.8511 (involved in Special Civil Application No.484 of 2005) with respect to land bearing Block No.1250 paiki. In both these petitions, the petitioners have challenged the legality and validity of the orders passed by all the authorities below in quashing and setting aside the aforesaid entries while exercising the powers under Rule-108 of the Gujarat Land Revenue Rules in RTS proceedings on the ground that the transaction in question between the respective petitioners and the original land owners were hit by the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as "the Act" for short).

#. Relying upon the judgment of this Court in the case of EVERGREEN APARTMENT CO-OP HOUSING SOCIETY V. SPECIAL SECRETARY, REVENUE DEPARTMENT, GUJARAT STATE" reported in 1991 (1) GLR 113 and the decision in the case of JANARDAN D. PATEL V. STATE OF GUJARAT, reported in 1997 (1) GLR 50, Shri Janak Vyas, the learned advocate for the petitioners has submitted that the revenue authorities while exercising the powers under Bombay Land Revenue Code (hereinafter referred to as the "Code" for short) and under the provisions of the Gujarat Land Revenue Rules, 1972 could not have been examined the provisions of the other enactment even though the very Officer may be holding and conferred with the powers under the another Enactment and therefore, the Mamlatdar exercising the powers under the Bombay Land Revenue Code (hereinafter referred to as the "Code" for short) cannot examine in repsect of the other document for Prevention of Fragmentation and Consolidation of Holdings Act or under the Bombay Tenancy and Agricultural Land Ceilings Act and therefore, he has submitted that all the orders passed by all the authorities below quashing and setting

aside the aforesaid entries are illegal and bad and the same deserve to be quashed and set aside by this Court. Shri Janak Vyas, the learned advocate appearing on behalf of the petitioners has also submitted that the petitioners have purchased the lands in question by registered sale deeds and it confers rights in respect of the lands in question in favour of the purchasers of the land and therefore, in normal circumstances, the purchasers of the lands in question can be said to have acquired the rights in the aforesaid lands, for which, necessary revenue entries are required to be mutated in the revenue records. It is therefore requested to allow both these aforesaid special civil applications.

#. Shri Nagesh Sood, the learned AGP for the respondents relying upon the decision of this Court in case of JAYANTILAL JETHALAL SONI V. STATE OF GUJARAT in Special Civil Application No.12547 of 2004 dated 28.9.2004, more particularly, relying on the observations made in para-8 of the decision, has submitted that if it is found by the revenue authority that the transaction which is required to be reflected in the revenue records, the same is hit by the provisions of the Prevention of Fragmentation Act, the authorities were justified in quashing and setting aside the aforesaid two entries. Therefore, it is requested to dismiss both these special civil applications.

#. Heard the learned advocates appearing on behalf of the respective parties. It is pertinent to note that the learned Single Judge of this Court in its judgment and order dated 28.9.2004 in case of JAYANTILAL JETHALAL SONI V. STATE OF GUJARAT rendered in Special Civil Application No.12547 of 2004 considering the aforesaid two decisions i.e. EVERGREEN APARTMENT CO-OP HOUSING SOCIETY V. SPECIAL SECRETARY, REVENUE DEPARTMENT, GUJARAT STATE" reported in 1991 (1) GLR 113 and the decision in the case of JANARDAN D. PATEL V. STATE OF GUJARAT, reported in 1997 (1) GLR 50 (Supra), in para-8 of its judgment has observed as under :

"8. Therefore, keeping in view of the aforesaid observations made by this Court in the above referred judgment, it appears that it would not be proper to hold that even if there are breaches under other enactment or such transfer is barred under the other enactment, the revenue authorities exercising power under Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising power under the Code will

have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the revenue authority prima facie is of the view that such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to result into adversely affecting the rights under the other enactment and consequently sale is prohibited, then in that case, the appropriate course for the revenue authority would be to record the entry for registered sale deed with the express observations that the registered sale deed is prime facie in breach of the other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed and the entry should be made subject to the final decision which may be taken by the competent authority under the other concerned enactment. This Court is inclined to take such view, because the one, who may be a bonafide purchaser or one who is interested to purchase the property would normally rely upon the revenue entry for enquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known to the either person interested or to the other party who may act upon the revenue entry that the present transaction may be in breach of the other enactment and consequently it may result into not giving correct picture of the title or possession of the property in question in accordance with law. If the entry, on the basis oft he sale deed is not at all effected, with the aforesaid qualification or without aforesaid qualification, it may also conversely mislead the public at large and also to those persons who act upon the revenue record, because there will be no recording of such transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore, it cannot be said that the authority exercising power under

the Land Revenue Code has absolutely no jurisdiction to even prima facie consider the matter as to whether the breach of the other enactment is committed or not. At the most. At the most, it can be said that the authority exercising powers under the Code has no power to conclude as to whether the breach of the other enactment by the impugned transfer or registered sale deed is made or not."

#. As held by the Hon'ble Supreme Court of India in catena of judgments, mere entry in the revenue record does not confer any right, title or interest in favour of the person in whose favour the entry stand and the entry is only for a fiscal purpose for collecting and recovering the revenue only. It is true that while exercising the powers under the provisions of the Bombay Land Revenue Code and the Rules framed thereunder, more particularly, Rule 108 of the Gujarat Land Revenue Rules, the authority cannot consider the legality and validity of the transaction and the breach of any other enactment. However, as held by this Court in more than one decision, while considering the entry if ultimately it is found by the revenue authority that the transaction is hit by provisions of any other law, then, certainly he can refer the dispute to the appropriate authority. Considering the aforesaid judgment of the learned Single Judge in case of JAYANTILAL JETHALAL SONI (Supra), the order passed by all three authorities below quashing and setting aside the aforesaid two Entries Nos.8737 and 8511 relating to Block No.1250 paiki are hereby modified to the extent that it will be open to the appropriate authority under the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 to initiate the proceedings in accordance with law if it is ultimately found by the authority that by virtue of the said transaction in question for which the aforesaid two entries made, are hit by the provisions of the aforesaid Act and such proceedings may be disposed of in accordance with law and on merits after giving reasonable opportunity to the petitioner.

Rule, in both these matters, is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

Date : 21.2.2005 [M.R.Shah, J.]

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